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9 Attorneys for WAYMO LLC

10 UNITED STATES DISTRICT COURT

11 NORTHERN DISTRICT OF CALIFORNIA

12 SAN FRANCISCO DIVISION

13 WAYMO LLC,

14 Plaintiff,

15 vs.

16 UBER TECHNOLOGIES, INC.;
17 OTTOMOTTO LLC; OTTO TRUCKING
LLC,

18 Defendants.

CASE NO. 3:17-cv-00939

**PLAINTIFF WAYMO LLC'S
SUPPLEMENTAL BRIEF IN
OPPOSITION TO DEFENDANTS UBER
TECHNOLOGIES INC.'S AND
OTTMOTTO LLC'S MOTION TO
EXCLUDE ONE OF THREE OPINIONS
PROFFERED BY WAYMO EXPERT JIM
TIMMINS**

1 At the Pretrial Conference Counsel for Uber suggested that the deposition testimony of Mr.
2 Timmins established that he was not qualified to analyze the document trail related to the ownership
3 and control of Tyto LiDAR LLC's ("Tyto") and render an opinion that Mr. Levandowski, through
4 a series of shell companies and a trust, had control over Tyto's assets. Counsel for Uber made clear
5 at the hearing that there is no dispute as to the substance of Mr. Timmins's analysis or conclusion,
6 just Mr. Timmins's qualifications for rendering them. As shown in detail below, Mr. Timmins is
7 more than qualified to analyze the subject documents and render an opinion as to the control of
8 Tyto's assets.

9 Uber based its *Daubert* motion and its argument at the Pretrial Conference on a faulty
10 premise that an expert with 35 years of experience in investment banking, venture capital, and
11 business consulting, which includes analyzing corporate ownership and control documents, cannot
12 analyze these very same types of documents and provide an opinion as to their import because it is
13 purportedly a legal opinion and Mr. Timmins lacks a law degree. (Dkt. 1863 at 131:15-18 ("[W]e
14 only brought this because it seems so facially evident that this expert, this M&A expert should not
15 be allowed to offer this legal opinion at all.")) However, in conceding that he was not a lawyer Mr.
16 Timmins made clear that he was not here, nor has he ever, provided a legal opinion. (Ex. 1 at 32:7-
17 33:3 ("I'm not an attorney. And as such, I've not rendered an opinion about a question of law."))
18 Instead, the opinion Mr. Timmins offered, from a business perspective rather than a legal one, is
19 well within the extensive business acumen and expertise analyzing these same types of documents
20 in the course of his work. Indeed, Mr. Timmins has previously offered opinions related to entity
21 control in the context of fiduciary duties of a shareholder, as well as the ownership of shares of a
22 company through a trust and issues of control arising therefrom. (Ex. 1 at 252:24-254:6.) Moreover,
23 Mr. Timmins made clear that issues of entity control also arise in areas of his work outside of the
24 context of litigation consulting, such as valuation and allocation of company securities. (*Id.* at
25 255:22-256:11 ("When we're performing valuation of securities of companies and then allocating
26 that down to valuation of securities, we're often looking at the nature of the shareholder who holds
27 the securities. And as you're probably aware, many times wealthy individuals own securities
28 individually -- I'm sorry -- indirectly through a trust, through a limited partnership often called a

1 family limited partnership, or a FLIP. Those are the primary instances in which it -- in which trusts
2 enter into our work.”.)

3 As it indicated at the hearing, Uber is presumably focusing on Mr. Timmins’s testimony that
4 he has never been asked to provide opinion testimony on the narrow issues of the powers of settlors
5 and substitutors of a trust, or that Mr. Timmins has never personally set up a trust or advised others
6 to do so. (*See, e.g. id.* at 256:12-257:6; 258:16-259:2.) But these facts are irrelevant to the opinion
7 Mr. Timmins offered in this case that Uber challenged in its *Daubert* motion. As made clear in his
8 deposition, the opinion Mr. Timmins rendered was primarily based on his review of the *entire chain*
9 documenting the shell companies and trust that form the direct link from Tyto to Mr. Levandowski,
10 and his understanding of the operation of Limited Liability Companies and trusts through his own
11 work experience. (*Id.* at 255:22-256:11, 257:18-258:6; 260:9-264:13.) Uber’s myopic focus on one
12 link of the chain, the trust documentation, ignores the actual substance of the Mr. Timmins’s opinion
13 that analyzed the implications and connections between each document in this chain. (*See* Dkt.
14 1611-6.)

15 For the reasons set forth above and more fully in Waymo’s Opposition, the Court should
16 deny Uber and Ottomotto’s motion to exclude the opinion of Jim Timmins concerning the ownership
17 and control of Tyto. However, given that the parties do not dispute the underlying facts and the
18 conclusion arising therefrom, as further demonstrated by Uber’s counsel’s statements at the Pretrial
19 Conference, Waymo reiterates its alternative request for the Court to instruct the jury that Mr.
20 Levandowski, through the operation of a series of shell companies and trusts, owned and controlled
21 Tyto.

23 DATED: September 16, 2017

QUINN EMANUEL URQUHART & SULLIVAN,
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25 By /s/ Charles K. Verhoeven

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